

82-149-1

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March 25, 1983

Brian C. Strohm, Ph.D.
Assistant Director
Office of Waste Management
Division of Public Health Services
Hazen Drive
Concord, New Hampshire 03301

Re: Application Fees

Dear Brian:

By memorandum of December 6, 1982, you requested our advice as to whether or not the Bureau of Hazardous Waste Management ("Bureau") has authority to charge an application fee for a hazardous waste permit-by-rule and a renewal fee for standard permits. It is our conclusion that the Bureau may charge such fees.

RSA 147-A:4,II contains an express grant of authority to charge a fee for hazardous waste permit applications:

A permit application fee not to exceed \$1,000 shall accompany each permit and permit renewal application. The amount of the fee shall reflect the relative effort necessary for review of the application. Permit application fees shall be used by the Bureau for review of applications.

The Bureau's rules establish three types of permits: standard permits, interim permits and permits-by-rule. He-P 1905.09(d). A permit-by-rule is defined by the regulations as "a special permit" which is "automatically granted in lieu of a standard permit." He-P 1905.09(d)(4)a.1.

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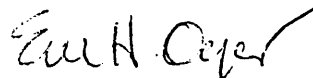
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Although these permits are issued without the standard application process, the Bureau must make a determination as to whether or not a particular facility complies with the conditions specified in He-P 1905.09(d)(4)b. This determination is equivalent to and made in lieu of a standard permit application review.

Because the review conducted by the Bureau to determine a facility's entitlement to a permit-by-rule is less extensive than the review necessary to determine entitlement to a standard permit, He-P 1905.09(c) imposes substantially smaller application fees for a permit-by-rule, than for a standard permit. This difference in fees is mandated by RSA 147-A:3,X which directs the Bureau to adopt rules relative to: "a sliding scale for operator permit application fees, based on the cost of processing applications."

In conclusion, RSA 147-A:4,II expressly authorizes the Bureau to charge a hazardous waste standard permit renewal application fee. Based on our review of the applicable statutes and rules, it is our further conclusion that a fee may be charged by the Bureau to recover its costs in reviewing a request for a hazardous waste permit-by-rule provided that the fee charged reflects the costs of processing the application.

Very respectfully,
Yours truly,



Eve H. Oyer
Attorney
Environmental Protection Div.

EHO/clf

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